

DISCUSSION OF THE AMENDMENT

Claim 1 has been amended by lowering the erroneous “85” maximum for component c) to --75--, as supported by Claim 4, and to make explicit what was at least already implicit, i.e., that the sum of the components a) and b) comprising at least 20 parts by weight of monomer units is --based on 100 parts by weight of a), b) and c)--.

Claim 7 has been amended to correct a typographical error.

No new matter is believed to have been added by the above amendment. With entry thereof, Claims 1-20 will remain pending in the application.

### REMARKS

Applicants thank the Examiner for the courtesy extended to Applicants' attorney during the interview held December 2, 2009, in the above-identified application. During the interview, Applicants' attorney explained the presently-claimed invention and why it is patentable over the applied prior art, and discussed other issues raised in the Office Action. The discussion is summarized and expanded upon below.

The rejection of Claims 1-20 under 35 U.S.C. § 103(a) as unpatentable over US 2002/0142118 (Schmitz et al) and US 6,355,358 (Böer et al) and US 6,428,866 (Jadamus et al), is respectfully traversed.

In response to Applicants' arguments that none of the applied prior art address the problem of adhering an EVOH-based layer to an olefin-based or fluoropolymer-based layer, the Examiner finds that Schmitz et al and Böer et al disclose an "adhesive composition comprising the **same components**" (emphasis by Applicants) as recited in the present claims, and that Böer et al "teaches the blending of adhesive compositions with an amount of the polymer they are intended to adhere to in order [to] increase the adhesion between the adhesive composition and the polymer layer."

In reply, and as Applicants' attorney pointed out during the above-referenced interview, the adhesive compositions of Schmitz et al and Böer et al differ from that of presently-recited bonding agent layer II. Neither contains a fluoropolymer or a polyolefin. While various claims such as present Claim 1 do not require that bonding agent layer II include a fluoropolymer or a polyolefin, the Examiner's rationale requires a teaching in the art that the adhesive composition contain some amount of the polymer to which it is intended to adhere. The Examiner relies on Böer et al's disclosure that "[a] typical approach to bonding, for example polyester and polyamide layers, would be to use an adhesion promoter consisting of a mixture of polyamide and polyester" (column 2, lines 7-9). But the Examiner

ignores the disclosure immediately following, which describes the problems of such an approach (column 2, lines 10-16). Thus, the prior art neither discloses nor suggests that the embodiment of present bonding agent layer II when component c) is not present would bond a fluoropolymer or a polyolefin to EVOH. Nor does the prior art disclose or suggest the present bonding agent layer II when component c) is present, since no adhesive is disclosed that contains a fluoropolymer or a polyolefin. As stated above, the applied prior art provides no solution or suggestion for adhering an EVOH-based layer to an olefin-based or fluoropolymer-based layer.

In response to Applicants' arguments that it would be impossible to predict to what extent, if any, the layer I material of Schmitz et al or the adhesion promoter of Böer et al, would have on adhering presently-recited layers I and III, and that Jadamus et al adds nothing relevant to the issue of predictability of the layer I material of Schmitz et al or the adhesion promoter of Böer et al as a bonding agent between an EVOH-based layer and an olefin-based or fluoropolymer-based layer, the Examiner finds that Applicants have not presented reasoning or evidence to support this assertion.

In reply, Applicants have provided such reasoning. Nevertheless, the burden is on the Examiner to make out a *prima facie* case of obviousness. Such a *prima facie* case has not been made out. Thus, Applicants were under no burden to provide any evidence of what would be predictable.

For all the above reasons, it is respectfully requested that the rejection be withdrawn.

The rejection of Claims 1-20 under 35 U.S.C. § 112, second paragraph, as indefinite, is respectfully traversed.

As Applicants' attorney explained during the interview, both components a) and b) necessarily contain polyamide-forming monomer units. The requirement in Claim 1 that "the sum of the components a) and b) comprising at least 20 parts by weight of monomer units

based on 100 parts by weight of a), b) and c)” provides a further limitation on both the minimum amount and the particular polyamide-forming monomer units which must be present. As pointed out by Applicants’ attorney during the interview, caprolactam, the combination hexamethylenediamine/adipic acid, etc. are species of the genus “polyamide-forming monomers selected from the group consisting of lactams,  $\omega$ -amino carboxylic acids and equimolar combinations of diamine and dicarboxylic acid” for component a), and “polyamide” for component b). Thus, the present claims do **not** raise an issue of a broad range or limitation together with a narrow range or limitation that is indefinite.

With regard to the term “auxiliaries,” the rejection is now moot, as indicated in the Interview Summary for the above-discussed interview.

With regard to Claim 20, since PA6 is a well-known polyamide, Claim 20 modifies Claim 1 by simply (inferentially) reciting that component b) is present in an amount greater than 0 parts by weight and comprises PA6. Claim 20 is inclusive of the presence of other polyamides, or no other polyamides, and PA6 in any finite amount up to 100 parts. Thus, components a) and/or c) may still be present or absent. Thus, the Examiner’s finding of insufficient antecedent basis is clearly erroneous. The Examiner’s interpretation of the claim as component b) being present in an amount of 100 parts by weight of bonding agent layer II is also clearly erroneous.

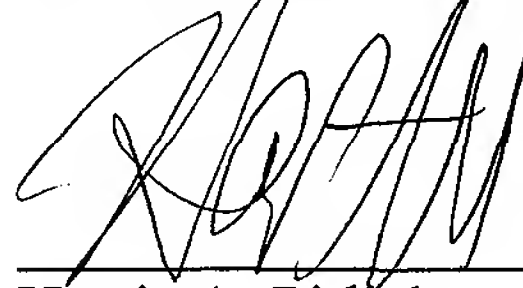
For all the above reasons, it is respectfully requested that this rejection be withdrawn.

The objection to Claim 7 is now moot in view of the above-discussed amendment. Accordingly, it is respectfully requested that the objection be withdrawn.

All of the presently-pending claims in this application are now believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Respectfully submitted,

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